IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.402 OF 2007

Carona Ltd. and Anr. ...Applicants

Vs.

State of Maharashtra & Anr. ...Respondents

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Mr.A.H.H.Ponda with S.R.Karnik Advocate for applicants
Mr.A.S.Shitole A.P.P. for the State
Mrs.Rohini A.Wagh for Respondent no.2

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 23, 2007

P.C.

1. Heard the learned counsel for the applicants-original accused, the learned counsel for the respondent no.2-original complainant and the learned A.P.P. for the State.

2. The respondent no.2-complainant has filed about 95 cases under sections 138 of Negotiable Instruments Act against the applicants nos. 1 and 2 and 5 to 6 other accused. Originally there were eight accused, however, one of them has expired. The original accused nos. 3 to 8 had preferred an

application before the learned Magistrate. In the said application, it was prayed that the leading of defence evidence in these cases may be deferred till the evidence of the complainant is completed and the statements under Section 313 of Cr.P.C. of the accused are recorded in all those cases pending before that Court. The said application came to be allowed by the learned Magistrate by order dated 8.12.2006.

3. Thereafter, the present applicants original accused nos.1 and 2 preferred an application with same prayers. However, a different view was taken by the learned Magistrate by order dated 13.12.2006. Being aggrieved thereby, the applicants preferred Criminal Application No.4507 of 2000 before this Court. In the said application, this Court directed the learned Magistrate to follow the procedure prescribed by him in his order dated 8.12.2006. Thereafter, the applicants approached the learned Magistrate and requested him to follow the procedure as was being followed for accused nos. 3 to 8. However, the learned Magistrate by order dated 2.2.2007 stated that the leading of defence evidence cannot be

deferred till the evidence of complainants is completed in all the matters. Hence, the matter has been fixed for leading of defence evidence on 15.1.2007.

4. From the application preferred by original accused nos. 3 to 8, it is clear that they have prayed that the cases may be deferred till the evidence of the complainants is completed in all the cases pending before that Court. The said application came to be allowed. It may also be stated that as far as the application preferred by original accused nos. 3 to 8 is concerned the complainant, considering the requirement of speedy disposal, has consented to the prayer of the accused. The said reply is in writing which is annexed as Exhibit-E to this application. The said order was not challenged. In fact, the learned counsel for the respondent no.2-original complainant states that they are not aggrieved by the said order and hence, they have not challenged the said order.

5. When the leading of defence evidence has been deferred till the evidence of the complainant is

completed in all the cases in respect of original accused nos.3 to 8 and 313 statements of the accused are recorded, then it would be in the fitness of things that the same procedure i.e. "deferring leading of defence evidence till the evidence of the complainants is completed in all the cases ought to be followed even in respect of the present applicants i.e. original accused nos.1 and 2.

6. In this view of the matter, the order dated 2.2.2007 is set aside. The learned Magistrate shall follow the same procedure for the applicant as done in case of Accused nos.3 to 8 in order dated 8.12.2006 whereby application by accused nos.3 to 8 for deferring the leading of defence evidence till the evidence of complainant is completed in all the cases and the statements under Section 313 of Cr.P.C. are recorded in those cases was allowed.

7. Application is disposed of.

[V.K.Tahilramani, J.]